80-1218

Office-Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1980.

EUGENE B. BOWLER,
PETITIONER,

v.

JIMMY CARTER, PRESIDENT
OF THE UNITED STATES OF AMERICA
AND
BENJAMIN CIVILETTI, ATTORNEY GENERAL
OF THE UNITED STATES OF AMERICA,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

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Questions Presented for Review.

1. Whether the question of illegal aliens and refugees is a political or legal one?

2. Whether the Refugee Act of 1980 and the United States part in United Nations Protocols involving refugees is unconstitutional under at least IX and X Amendments to the United States Constitution?

3. Whether any matter arising under the United States Constitution (e.g., immigration) is under jurisdiction of United States Courts (see Marbury v. Madison)?

4. Whether massive violations of United States immigration laws occurs because United States officials are violating their oaths of office?

5. Whether the plaintiff has "standing" as a part of an injured nation? Whether the American people can control their own destiny?

6. Whether the injunction and court order prayed for by the plaintiff should be granted?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Petitioner Eugene B. Bowler respectfully prays that a writ of certiorari issue to review an opinion and judgment of the United States Court of Appeals for the First Circuit entered in this case on January 8, 1981 which upheld without oral argument the judgment of the United States District Court dismissing the petitioner's petition for injunctive relief and summary court order.

Opinion Below.

The opinion of the United States Court of Appeals for the First Circuit is reproduced in the Appendix of this petition at pp. 9-10.

Jurisdiction.

The opinions and judgment of the United States Court of Appeals for the First Circuit were entered on January 8, 1981.

Petitioner invokes the Court's certiorari jurisdiction under 28 U.S.C. § 1254(1). Filing of this petition was accomplished within 90 days of the United States Court of Appeals Order affirming the judgment of the United States District Court, dismissing the petitioner's petition for injunctive relief and summary court orders.

Constitutional and Statutory Provisions.

Petitioner's federal constitutional claims are based upon the Constitution of the United States Art. I § 8 which gives unto the Congress the power to establish a uniform rule of naturalization and from whence comes Title 8 U.S.C., e.g., §§ 1323-1326; 1329, 1357, 1361, 1182, 1151, 1152, 1153, 1224, 1225, 1226, 1227, 1201, 1202, 1221, which are supposed to control immigration according to law.

U.S. Const. amend. IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Const. amend. X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Statement of the Case.

The immigration statutes of the United States are being massively violated because the President and other government officials allow masses of illegal aliens and/or refugees into the United States as well as spurious student and tourist aliens. The Judicial Department should order these violations stopped so the American people can control their own destiny.

Reasons for Granting Writ.

A. According to the customs and usages of nations a sovereign people have the right to control their own destiny. Now let the issue be joined between those government officials who fail to discharge their oaths of office to uphold the laws of the United States and to protect and defend it . . . and an injured nation and its people. The lax and over generous immigration policies and non policies of the past are insufficient to the most difficult present.

B. E Pluribus Unum—When the whole is hurt so are all its parts. Massive illegal immigration is an attack upon the United States—so all Americans suffer. The plaintiff is a native born American (New York) thus he has a "standing" as a part of the whole.

C. The government created the 55 M.P.H. law to save gas which is in shortage! If there are such shortages why allow in masses of illegal aliens and/or refugees to make it more severe? Last year the plaintiff got a speeding ticket on U.S. Route #95 in Cumberland, Maine for exceeding the 55 M.P.H. law and it cost him $30.00.

D. Article 1 Section 8 of the Organic Act delegates unto *the Congress the power to establish a uniform rule of naturalization* and from whence comes the Title 8 U.S.C. which are supposed to control immigration according to *the law.*

E. See *Marbury v. Madison,* 1 Cranch 137 (1803). "*The judicial power of the United States is extended to all cases arising under the Constitution.*" (See above Art. 1 Sec. 8).

> "It is emphatically the province and duty of the judicial department to say what the law is . . . [t]hat the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme and can seldom act, they are designed to be permanent.
>
> "This original and supreme will organizes the government and assigns to different departments their respective powers. It may either stop here or establish certain *limits* not to be transcended by these departments.
>
> "The government of the United States is of the latter description. The powers of the legislature are *defined and limited;* and that those limits may not be mistaken, or forgotten, the [C]onstitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by *those intended to be restrained?* The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed . . ." *Marbury v. Madison,* 1 Cranch (emphasis supplied).

F. Thus, the executive department, must do only what is *lawful* and must enforce the *immigration laws passed by Congress* which power was delegated to Congress by Art. 1 Sec. 8 of the Constitution of the United States, which was in turn created by "We the people" who alone are sovereign!

G. Jurisdiction of federal courts, see *Cohens v. Virginia,* 6 Wheat 264 (1821). The second section of the third article of the Constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the courts of the Union in two classes of cases. In the first the jurisdiction depends on the character of the cause whoever may be the parties. . . .

See *Kansas v. Colorado,* 200 U.S. 46 (1907). By reason of the fact that there is no general grant of legislative power it has become an accepted constitutional rule that this is a government of enumerated powers. . . .

H. This is *not a political question.* Simply one of enforcing the immigration laws already on the books and securing the United States from massive invasions of illegal aliens and/or refugees. Illegal aliens are by definition illegal and all refugees must be *screened prior* to coming to the United States and presenting themselves here as an *accomplished fact* which is difficult if not impossible to undo in a nation like America wherein those who would, can tie an obsessive, compulsive legal system up almost indefinitely! This is simply *upholding the law* which those in the *executive department* and all those in the *judicial department* have taken oaths to do. All immigration laws must be enforced by all necessary efforts or those oaths of office are violated.

I. Much if not most of the suffering world might be classed refugees from political and/or economic oppression, which may well be interrelated and much if not most of the suffering fecund earth probably would flood into the United States if they could. The United States can't be held hostage to the fecundity of the earth. Masses of illegal aliens and/or refugees here and to come are a *dangerous threat to the social, political and economic order and existence of the United States.* Arrogant bureaucrats in government must not be allowed to classify endless numbers of aliens who wish to

come or do in fact present themselves on our shores as refugees. (The plaintiff stands ready to present evidence on the damage done the United States by illegal immigration.)

J. When and if immigration is rigidly regulated by law it simply means the American people via their elected Congress have spoken and said how many, a total (if any) immigrants of all classifications will be allowed into the United States, a definite number. When as now there are masses of illegal aliens and/or refugees entering the United States. When immigration laws are not enforced it means the American people have lost control of their destiny and future.

K. Refugees and/or illegal aliens want to come to the United States because it is a "soft deal," e.g. we are an obsessive nation that lets itself be punished by other nations abroad and unproductive and criminal elements at home. There are other nations in the world besides the United States for them to go to. Much or most of the suffering earth would like to enjoy the United States standard of life.

L. The President is commander-in-chief of all armed forces etc. and is able to physically enforce immigration laws and protect the United States borders if he will. It is not a matter of money for it is far cheaper to keep out masses of illegal aliens and/or refugees than let them invade the United States.

We can give poor nations (as we have) technical aid and some surplus food. But why should the American people be held hostage to the fecundity of the suffering earth and gutless domestic (politicians)/government officials who won't enforce the law? (The answer may be a medication given en masse to modify human sex energy to useful ends.)

M. America is so *vulnerable* we can't protect ourselves in this matter. Refugees and/or illegal aliens may well be a *new political or military weapon* which can be used against the United States by any group or nation that wants to destabilize the United States.

N. The *Refugee Act of 1980 is unconstitutional* as it gives asylum to anyone who presents themselves on United States shores (in violation of United States laws) and fears persecution if forced to return. Also the *United Nation Convention Protocols* regarding this matter are *unconstitutional* as related to the United States. In effect, these "laws" make the United States *defenseless* to protect itself from massive invasions of illegal aliens and/or refugees *here* and *to come.* Since all members of Congress and the executive branch have taken an oath to protect and *defend* the United States such "laws" are *unconstitutional.*

O. The *Refugee Acts of 1980* and the *United States involvement* in the *United Nations Convention Protocols* regarding refugees are *unconstitutional* under the IX and X Amendments to the Constitution of the United States: (IX the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the *People.*) (X the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively and the people.) Thus we the sovereign people have an absolute right to control our own destiny in the matter of the United States being invaded by masses of illegal aliens and/or refugees here and to come. Under the IX and X Amendments to the Constitution of the United States, the President and other involved government officials have not the right to infringe on the rights and powers reserved to "we the people" and certainly one of our *most basic rights* is to decide if we want to allow masses of aliens (e.g. illegal aliens and/or refugees etc.) to enter the United States because United States law is violated or circumvented! Masses of such aliens here and to come are a threat to the United States political, economic and social order. The United States can't be held hostage to the fecundity of the suffering world!

Conclusion.

For all of the foregoing reasons petitioner Eugene B. Bowler respectfully prays that his petition for the writ of certiorari should be granted and the judgment of the United States Court of Appeals for the First Circuit be struck down.

Respectfully submitted,

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(207) 236-4708
Petitioner Pro Se.

January 1981

Appendix.

United States Court of Appeals for the First Circuit.

No. 80-1602.

EUGENE B. BOWLER,
PLAINTIFF-APPELLANT,
v.
JIMMY CARTER, PRESIDENT, ET AL.,
DEFENDANTS-APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE,
[HON. EDWARD THAXTER GIGNOUX, *U.S. District Judge*]

Before COFFIN, *Chief Judge*,
CAMPBELL AND BOWNES, *Circuit Judges*.

Eugene B. Bowler, on brief pro se.
Thomas E. Delahanty, II, United States Attorney, and *Margaret D. McGaughey*, Assistant United States Attorney, on brief for appellee.

January 8, 1981

PER CURIAM. The appellant, acting *pro se*, appeals from the judgment of the district court dismissing his complaint with prejudice. The complaint sought to enjoin the President and the Attorney General of the United States from "allowing by acts of commission and omission masses of illegal aliens and/or refugees to flood into" the United States. The actions giving rise to the complaint are defendants' pur-

ported acquiescence in immigration across this country's southern border and defendants' failure to exclude student and tourist aliens.

After a hearing on the defendants' motion to dismiss the complaint, the Magistrate recommended that defendants' motion be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure because appellants' action to enjoin defendants' allegedly lax enforcement of the immigration laws on the facts pleaded presented a non-justiciable political question. The Magistrate, in addition, found dismissal on Rule 12(b)(6) grounds warranted because the appellant had failed to make a "plausible allegation of a violation by defendants of any of his rights—either Constitutional or statutory or common law." The district court adopted the Magistrate's recommendation and dismissed the complaint with prejudice.

Our review of the record and of the briefs presented by the parties satisfies us that even affording the *pro se* complaint a liberal reading, *see Haines* v. *Kerner*, 404 U.S. 519, 520 (*per curiam*), the complaint properly was dismissed for the reasons stated in the Magistrate's recommended decision. We, therefore, summarily affirm the judgment of the district court pursuant to our Local Rule 12.

United States District Court
District of Maine

EUGENE B. BOWLER, Plaintiff	:	
v.	:	CIVIL NO. 80-0125 P
JIMMY CARTER, President of the United States, and BENJAMIN CIVILETTI, Attorney General of the United States, Defendants	:	

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Hearing having been had before the Honorable Melvyn Zarr, United States Magistrate, upon defendants' motion to dismiss filed June 20, 1980 in the above-entitled action; and the United States Magistrate having considered the written and oral arguments of counsel upon said motion; and the United States Magistrate having filed with this Court on August 8, 1980, with copies to plaintiff and defendants' counsel, his report and recommendation that defendants' motion to dismiss be granted; and plaintiff having filed on August 12, 1980, his objection to the Magistrate's report and recommendation, *see* 28 U.S.C. § 636(b)(1); and the Court having reviewed and considered the Magistrate's report and recommendation, together with the entire record, including the briefs submitted by plaintiff and defendants' counsel before the Magistrate and this Court; and this Court concurring with the recommendation of the United States Magistrate, it is

ORDERED as follows:
(1) That the report and recommendation of the Magistrate is APPROVED;
(2) That defendants' motion to dismiss is GRANTED;
(3) That the Clerk of this Court enter judgment DISMISSING the action with prejudice and with costs.

Dated at Portland, Maine, this 4th day of September 1980.

EDWARD THAXTER GIGNOUX,
United States District Judge

A True Copy
Attest: William S. Brownell, Clerk

By Elizabeth Simmons,
Deputy Clerk

United States District Court
District of Maine

EUGENE B. BOWLER, Plaintiff	]	
v.	]	CIVIL NO. 80-0125 P
JIMMY CARTER, President of the United States, and BENJAMIN CIVILETTI, Attorney General of the United States, Defendants	]	

RECOMMENDED DECISION OF DEFENDANTS' MOTION TO DISMISS

On April 16, 1980, plaintiff, acting pro se, filed a complaint seeking injunctive relief against the defendants, the President and the Attorney General of the United States. Plaintiff's theory is that the defendants have failed and are failing to vigorously enforce the laws of the United States barring illegal aliens from entering this country.

Defendants have filed a motion to dismiss, assigning a number of grounds in support of the motion. Defendants' motion has been briefed by defendants and oral argument was had on the motion.

The principal ground of the motion is that there is no cause of action in these circumstances for lax enforcement and that plaintiff has therefore failed to state a claim upon which relief can be granted. F.R.C.P. 12(b)(6). Defendants' argument is well taken. There is no cause of action for lax enforcement for a very important reason. Such a cause of action would violate principles of separation of powers and would involve the courts in political questions.

Plaintiff has made no plausible allegation of a violation by defendants of any of his rights—either Constitutional or statutory or common law.

Accordingly, for the foregoing reasons, I recommend that defendants' motion to dismiss be granted.

Dated at Portland, Maine this 8th day of August, 1980.

MELVYN ZARR
United States Magistrate

United States Court of Appeals for the First Circuit.

No. 80-1602.

EUGENE B. BOWLER,
PLAINTIFF-APPELLANT,
v.
JIMMY CARTER, PRESIDENT, ET AL.,
DEFENDANTS-APPELLEES.

JUDGMENT

Entered January 8, 1981

This cause came to be submitted on the briefs on appeal from the United States District Court for the District of Maine.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is summarily affirmed pursuant to Local Rule 12.

By the Court:

/s/ DANA H. GALLUP
Clerk.

United States District Court
District of Maine

EUGENE B. BOWLER,
Plaintiff

v.

JIMMY CARTER, President of the United States, and BENJAMIN CIVILETTI, Attorney General of the United States,
Defendants

CIVIL ACTION
NO. 80-0125 P

JUDGMENT

Pursuant to the Order Granting Defendants' Motion to Dismiss of the Court as filed in the above-entitled action on September 4, 1980, it is

ORDERED that the report and recommendation of the Magistrate is APPROVED; that defendants' motion to dismiss is GRANTED; and Judgment is hereby entered DISMISSING the above-entitled action with prejudice and with costs.

Dated: September 5, 1980

W. S. BROWNELL
Clerk, United States District Court

A True Copy
Attest: William S. Brownell, Clerk

By Elizabeth Simmons,
Deputy Clerk